IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

WP(C).No. 4302 of 2007(K)

PETITIONERS:

1.RAZIYA SUJA, FORMERLY PRESIDENT, ERATTUPETTA GRAMAPANCHAYAT, ERATTUPETTA PO., KOTTAYAM DIST.

2. P.H.HASEEB, FORMERLY VICE-PRESIDENT, DO. DO.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENTS:

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1. THE STATE ELECTION COMMISSION, TRIVANDRUM.

2. THE DISTRICT COLLECTOR, KOTTAYAM

3. THE SECRETARY, BLOCK PANCHAYAT, ERATTUPETTA.

4. C.VISWANATHA CHETTIAR, WORKING AS BLOCK DEVELOPMENT OFFICER, LALAM BLOCK, PALAI PO., KOTTAYAM DIST.

5. P.S.ABDUL KADHER, PUTHUPARAMBIL HOUSE, NADACKEL PO., ERATTUPETTA.

R1 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC, K.S.E.COMM.
R2 & R3 BY GOVT.PLEADER SMT.T.B.REMANI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.4302 OF 2007

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DATED THIS THE 7TH FEBRUARY, 2007

J U D G M E N T

Ext.P5 minutes of the meeting of the Committee of the Erattupetta Block Panchayat which was presided over by the 4th respondent who is described as B.D.O. of Lalam Block Panchayat, recording the deliberations on the motion of no-confidence against the petitioners, the former President and the Vice President of Erattupetta Grama Panchayat and the result of the motion is under challenge. Going by Ext.P5, the motion was carried with the support of 9 votes as against 7 votes opposing the motion. Ext.P1 is copy of the notice regarding the scheduling of the meeting for consideration of and voting on the no-confidence motion. As per Ext.P1, the meeting was to be held on the 3rd February, 2007 at 10.30 a.m. for considering the motion for no-confidence against the President and at 2.30 p.m. as regards the no-confidence motion against the Vice President. Ext.P1 calls upon all the members of the Panchayat Committee to attend the meetings at the scheduled time. The petitioners submit that the 3rd respondent-Secretary of the Erattupetta Block Panchayat who was the officer authorised by the Election Commission as per Ext.P3 notification

for receiving no-confidence motions against Presidents and Vice Presidents of Block Panchayats and to preside over the meeting which deliberates all such motions could not attend the meeting on 3.2.2007 since he was hospitalised. In his place, the 4th respondent who is the Secretary of the Lalam Block Panchayat came over to preside over the meeting. This was objected to by the petitioners and other members. But the 4th respondent would submit Ext.P2 statement in which he claims that he was appointed to preside over the meeting by the 2nd respondent-District Collector. The petitioners would refer to Section 157 of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act') and contend that the 2nd respondent cannot have any right to appoint Returning Officer. Relying on Ext.P3 notification of the Election Commission, it is contended that it is the Election Commission alone which has got the authority to appoint Returning Officer for elections and for the conduct of meetings to discuss no-confidence motions. The District Collector's action in interfering in the matter is illegal and mala fide. As regards the conduct of the meeting under the Presidentship of the 4th respondent also, the petitioners raise various allegations. The meeting was not conducted in a peaceful manner. Members were threatened and attacked. Certain members were

injured and had to be hospitalised. Ext.P4 newspaper report is relied on in this context. Voting was conducted in the shadow of threat and fear and votes were not recorded in a peaceful manner. Only those votes in favour of the motion were allowed to be recorded. It was under the threat and influence of the 4th respondent that 9 members became forced to record their votes supporting the motion. Ext.P5 is the minutes of the proceedings on 3.2.2007. Ext.P5 is impugned on various grounds and the petitioners pray that Ext.P5 be quashed by issuing a writ of certiorari.

2. A detailed statement has been filed on behalf of the 1st respondent-State Election Commission. It is stated therein that Erattupetta Grama Panchayat comes within the jurisdiction of the Secretary, Erattupetta Block Panchayat for the purpose of Section 157 of the Act and the statement relies on Ext.P3 notification of the Election Commission dated 8.4.2000 to contend that it is the Secretary of the Erattupetta Block Panchayat who has been authorised by the Election Commission to receive notices of intention of moving no-confidence motions against President and Vice President of Erattupetta Grama Panchayat. Notice of intention for moving the motion of no confidence was actually delivered to the Secretary of the Erattupetta

Block Panchayat by 9 members of the Panchayat on 18.1.07 and the Secretary who received notice of intention issued Ext.P1 notice regarding the meeting for consideration of the motion. Nine members of the Erattupetta Grama Panchayat represented to the Election Commission that there is a likelihood of the meeting for consideration of no-confidence being disrupted by the other members of the Panchayat and that there is likelihood of law and order problems at the venue of the meeting. Since sub-sections (6) and (8) of Section 157 the Act and the principles of law laid down by this Court in **Jacob Abraham v. State of Kerala** (1999 (1) KLT 225) and **Nazeera v. State of Kerala** (2006 (3) KLT 272) are clearly to the effect that a meeting convened for consideration of no-confidence motions shall not be adjourned except for reasons beyond human control, strict instructions were issued by the Commission to the Superintendent of Police, Kottayam to take all steps for affording necessary and adequate police protection for all members of the Erattupetta Grama Panchayat for attending the meetings for considering the motion of no-confidence against the President and Vice President and also for voting at the meetings. Similar instructions were issued by the Election Commission to the 3rd respondent who is the authorised officer,

reminding him that except for reasons beyond human control the meetings shall not be adjourned. The members of the Panchayat however approached this Court by filing W.P.(C)No.3526 of 2007 seeking police protection in the matter of peaceful conduct of the meetings for consideration of the no-confidence motion. Annexure-A is copy of the order passed by this Court in that Writ Petition. However, by about 4 p.m. on 2.2.2007, the District Collector, Kottayam was informed that the Secretary, Block Panchayat, Erattupetta (the incumbent in the office of the 3rd respondent) has been admitted to hospital. This information was conveyed to the Election Commission by the District Collector's Office. The Election Commission issued instructions to the District Collector to give full additional charge of Secretary, Block Panchayat, Erattupetta to the Secretary of the neighbouring Block Panchayat (the 4th respondent) so as to ensure that consideration of the no-confidence motion against the President and Vice President of the Grama Panchayat slated for 3.2.2007 is not adjourned. The Collector acted with dispatch and immediately issued Annexure-B order giving full additional charge of Secretary, Block Panchayat, Erattupetta to the Secretary, Block Panchayat, Lalam (the 4th respondent). Annexure-C is copy of the report of transfer of

charge/assumption of charge by the 4th respondent as Secretary, Block Panchayat, Erattupetta. Referring to the peculiar circumstances under which Sri.V.K.Chandrasekharan, present Secretary of the Block Panchayat, Erattupetta became ill and failed to exercise his duties as authorised officer of the Election Commission under Section 157 of the Act, it is stated that the Commission has called for report from the District Collector as to whether there has been dereliction of duty on the part of the Secretary, Block Panchayat, Erattupetta and also as to whether the incident relating to his admission to hospital on the eve of the meetings was a case of malingering. The Commission never can be a party to any endeavour on the part of anybody to thwart the process of consideration of no-confidence motions, the procedure relating to which is regulated statutorily. Refuting the allegation that several untoward incidents happened in the meeting, it is stated that it has been reported to the Commission by the authorised officer that during the meeting for considering the motion of no-confidence against the President, a member by name Sri.P.K.Noushad broke the table glass and attacked two members, viz., Sri.P.H.Noushad and Sri.Anas Nazar, were injured. They were in fact petitioners before this Court in Annexure-A order. Due to the timely action by the police, no other

untoward incident took place and there was no threat to any of the members for participating in the meetings or for voting. A large company of police was present while the meeting and the voting was going on. The meeting was held legally and no-one was denied his right either to participate in the meeting or to exercise the right to vote.

3. Sri.Georgekutty Mathew, learned counsel for the petitioner would address me elaborately on the various grounds raised in the Writ Petition. The learned counsel referred to the judgment of this Court in **Retnamma v. State Election Commission** (2000 (2) KLT 584). The learned counsel also referred to Section 183 of the Act and submitted that authorisation of officers other than those working in the Panchayat for discharging the duties of the Secretary of the Block Panchayat is totally unauthorised.

4. Sri.Murali Purushothaman, learned Standing Counsel for the Election Commission would meet all the submissions of Sri.Georgekutty Mathew. The learned Standing Counsel would refer to the judgments of this Court in **Jacob Abraham v. State of Kerala** (1999 (1) KLT 225) and **Nazeera v. State of Kerala** (2006 (3) KLT 272). Sri.Murali Purushothaman also invited my attention to my own

judgment in W.P.(C)No.29093 of 2006.

5. I have held in my judgment in W.P.(C)No.29093 of 2006 that on the terms of the notification which is produced as Ext.P3 in this case, the Secretary of the Block Panchayat becomes authorised to receive notice of intention to move no-confidence motions and to preside over meetings for discussing and for having voting on such motions not as persona designata but by virtue of his or her office. Annexure-B order of the District Collector will show that full additional charge of the 3rd respondent has been given to the 4th respondent. By virtue of Annexure-B, the 4th respondent became the Secretary of Erattupetta Block Panchayat also. By virtue of his becoming the Secretary of the Block Panchayat, Erattupetta as officer holding charge, he became the officer authorised by the Election Commission for the purposes of Section 157 of the Kerala Panchayat Raj Act, 1994. This being the position, the contention that the 4th respondent was not duly authorised for presiding over the meeting and for facilitating deliberations on the no-confidence motion and voting thereon cannot be sustained.

6. I am not at all impressed by the submission of Mr.Georgekutty Mathew that the meeting and voting was not conducted in a peaceful

manner. The materials placed on record by the Election Commission will reveal that the meeting was conducted quite properly and under police surveillance and none of the members of the Panchayat were denied opportunity to participate either in the discussions or in the voting.

7. The argument of Sri.Georgekutty Mathew made with reference to Section 183 of the Act also cannot be accepted. Section 183 does not deal with the fact-situation which obtains in this case. In this case, authorisation was given to the Secretary by the Election Commission and not by the Government. Such authorisation will apply to every person who at a given point of time holds the charge of Secretary of Block Panchayat.

The result of the above discussion is that Writ Petition will stand dismissed.

(PIUS C. KURIAKOSE, JUDGE)

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